HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Petition No.26827 of 2005

Between:

Malla Venkata Rao … Petitioner.

AND

Joint Collector, Visakhapatnam

and others. … Respondents.

:: O R D E R ::

Counsel for the Petitioner : Sri N (P). Anjana Devi,

Satyanarayana.

Counsel for Respondent No.1 : Government Pleader for Revenue

Counsel for Respondent No.2 : Sri A. Rajashekar Reddy

Counsel for Respondent No.3 : Sri B.G.Ravinder Reddy

Counsel for Respondent No.4 : Sri R.N.Reddy

Counsel for Respondent No.5 : Sri A.V.Krishna Kaundinya,

Special Government Pleader for

Commercial Taxes

Counsel for Respondent No.6 : Sri V.L.N.G.K.Murthy

13th APRIL 2006

Per G.S. Singhvi, C.J.

In this petition filed as a piece of public interest litigation, the petitioner-Malla Venkat Rao has prayed for grant of a declaration that the action of official respondents to issue C-Form permit to respondent No.6-Sri Parameswari Picture Palace, Marripalem, Visakhapatnam despite the fact that it is in arrears of Rs.27 lakhs is illegal and also for issuance of a direction for taking appropriate action against the said respondent by revocation of C-Form permit or licence on the ground of violation of Section 10 (2)(f) of the Andhra Pradesh Cinema (Regulation) Act, 1955 (for short 'the 1955 Act')

In the affidavit filed by him, the petitioner has averred that he is a social worker and is also a member of Gowri Seva Samajam, Visakhapatnam for the last several years. He has further averred that respondent No.6 was constructed more than three decades back and there is a serious dispute about title of the site of the theatre. While the Government is claiming that the theatre has been constructed on the Government land, the management of respondent No.6 is denying the same. He has further averred that the management of the theatre is making wrongful gain by evading payment of the dues payable under the 1955 Act as also the sums payable under the Employees Provident Fund Act, 1952. Still further, the petitioner has averred that despite the arrears of tax, respondent No.6 has manipulated issuance of C-Form permit and licence, which are liable to be revoked under Section 10 of the 1955 Act. On 26-12-2005, learned counsel for the petitioner sought adjournment to enable her client to file additional affidavit disclosing his educational qualifications and source of livelihood. Thereafter, the petitioner filed additional affidavit dated 28-12-2005 wherein he disclosed that he is S.S.C. passed and has got Diploma in

Automobile Services. He further disclosed that he is working as Technical Supervisor in S.M.V.Engineering Works, Visakhapatnam and is getting Rs.5000/- as monthly salary.

After service of notice on the official respondents, the Court passed order dated 24-2-2006 whereby, Commissioner of Commercial Taxes, Andhra Pradesh was directed to file his own affidavit giving the details of all cases in which the amount of entertainment tax is due from various cinema theatre owners and similar institutions and also spell out the reasons why the amount of tax due from respondent No.6 has not been recovered. The Court also directed the Commissioner to indicate the departmental action, if any, taken against the officer for showing laxity in the recovery of taxes.

In compliance of the Court's order, Sri V.Bhaskar, Commissioner of Commercial Taxes, Andhra Pradesh filed affidavit dated 27-3-2006. Paragraphs 2 and 3 of the affidavit of Sri Bhaskar read as under:

> "It is submitted that under the provisions of A.P.E.T.Act, 1939 the Asst. Commercial Tax Officer under the APGST Act, 1957 is the Entertainment Tax Officers in the matter of levy and collection of Entertainment Tax from the cinema theatres. He is the first level officer in the hierarchy officers of the department. His work is reviewed by the Deputy Commissioner at the District level. In obedience to the instructions of this Hon'ble Court dt. 24-02-2006 the information relating to arrears of entertainment tax by the cinema theatres/allied institutions, the action taken by the officers of the Department for its realizations, and the reasons for non-recovery of entertainment tax, has been called for from the Dy. Commissioners and the same has been received. The information received has been consolidated. Upon consolidation, it is revealed that as on date a sum of Rs.32.47 Crores are the total arrears of entertainment tax from 1509 theatres in the State. Out of these arrears a sum of Rs.2.69 Crores is covered by stay orders of various statutory authorities and courts. In respect of matters pending before this Hon'ble Court the concerned Officers had already sent counter affidavits to the Departmental Standing Counsel. I understand and believe it to be true that the Counsel had filed vacate stay petitions in some matters before this Hon'ble Court. In other cases action is being taken to send the para-wise remarks for drafting the counter affidavit by the Departmental counsel. In some cases, arrears could not be collected by the Entertainment Tax Officers on account of closure of theatres and in certain other cases though the Officers had taken action, it could not fructify. In respect of entertainment tax due from the cable operators, the Government of Andhra Pradesh through G.O.Ms.No.708 Rev. (CT-III) dept dated 09-10-2000 have entrusted the work of collection of tax to the local bodies. This department is no longer

associated with it.

A statement indicating the division wise arrears is annexed herewith.

Adverting to the specific directions of this Hon'ble Court as regards the 6th Respondent, I submit as under:

The 6th respondent theatre is engaged in the business of exhibiting the Cinematographic Films. The 6th respondent is a partnership firm consisting of the following partners:

1. Sri Sadaram Ramu, 2. Sri Malla Setha Ratnam, 3. Sri Konathala Manohar Rao Naidu, 4. Sri Konathala Lakshminarayana, 5. Sri Konathala Jagannatha Rao, 6. Sri Konathala Ramakrishna, 7. Sri Konathala Srinivasa Rao and 8. Sri S.Visweswara Rao, Managing Partner.

It is submitted that every exhibitor of the Cinematographic Films is obliged to pay Entertainment Tax under Section 5 (1) of the APET Act, 1939. Sri Visweswara Rao as Managing partner of the respondent theater looked after the day to day administration of the 6th respondent theater. During his period of management the 6th respondent theater fell in arrears of tax for the year 2001-02 in a sum of Rs.2,54,157/-. When this amount was sought to be recovered from the 6th respondent theater, it filed W.P.No.15720 of 2002 before this Hon'ble Court. This Hon'ble Court by an order dt. 16-9-2002 disposed of the writ petition directing the petitioner herein to pay the above amount in two instalments i.e., Rs.1,54,157/- on or before October, 2002 and Rs.1,00,000/- by 30-11-2002. The 6th respondent paid Rs.75,000/- on 29-10-2002, Rs.50,000/- on 23-3-2003 and Rs.50,000/- on 31-3-2003. Thus the petitioner paid a sum of Rs.1,75,000/- as against the dues of Rs.2,54,157/-. It subsequently paid an amount of Rs.45,937/- leaving a balance of Rs.58,123/- to be paid. For the year 2002-03 and 2003-04 also the 6th respondent theater fell in arrears of tax of Rs.7,01,243/- and Rs.4,37,943/-. For recovery of these amounts notices under the Revenue Recovery Act were issued to the 6th respondent on 07-7-2003, 20-9-2003 and 24-9-2003. In response to these notices the 6th respondent made some part payment. This constrained the department to address the licensing authority to cancel the permission given to the 6th respondent under the A.P.Cinematographic Act to screen the films in the theater in view of the arrears of entertainment tax.

It is submitted that by an order dated 22-7-2004, the licensing authority cancelled the permission given to the 6th respondent herein for screening the films in the theater. Aggrieved by the cancellation orders of the licensing authority, i.e., the 1st respondent herein, the 6th respondent filed an appeal before the Government of Andhra Pradesh. By an order dated 17-8-

2004, the Government suspended the orders of the licensing authority and called for the remarks of the Collector, Visakhapatnam. Further the respondent No.6 paid a sum of Rs.1,00,000/- on 06-03-2006 through cheque which was encashed on 07-03-2006. Efforts are also being made to realize the balance amount. Thus as on today the 6th respondent has to pay the following amounts to the department:

Year	Demand	Collection	Balance
2001-02	Rs.2,54,150/-	Rs.1,95,937/-	Rs. 58,213/-
2002-03	Rs.7,63,243/-	Rs. 62,000/-	Rs.7,.01,243/-
2003-04	Rs.4,37,943/-	---	Rs.4,37,943/-
2004-05	Rs.3,64,024/-	Rs. 36,489/-	Rs.3,27,535/-
07-03-2006	Rs.1,00,000/-		
Total:	Rs.18,19,360/-	Rs.3,94,426/-	Rs.14,24,934/-

For the financial year 2005-06 the entertainment tax liability of the 6th respondent has been worked out to Rs.2,91,281/- and the said amount has been paid by the new management of the 6th respondent theater as promised.

It is submitted that with effect from 01-04-2005 the management of the 6th respondent theater was reconstituted with new partners and the following persons are shown as partners:

1. Smt Malla Seetha Ratnam w/o Ramana Rao (she expired on 16-12-2005)
2. Konathala Jagannatham, 3. Sri Sadaram Ramesh, 4. Smt Konathala Padmavathi and 5. Smt Yellapu Suryakala.

The new management has promised the department through their letter dated 09-8-2005 promising to clear off the above arrears of tax for the years 2001-02 to 2004-05 apart from paying the current tax liability."

After perusing the affidavit of Sri V.Bhaskar, the Court observed that the same was unsatisfactory and directed him to file a comprehensive affidavit in terms of

order dated 24-2-2006. Thereafter Sri B.R.Meena who is holding charge of the post of Commissioner of Commercial Taxes filed affidavit dated 9-4-2006 along with a booklet showing the Entertainment Tax arrears which are to be recovered by the Commercial Taxes department.

On behalf of respondent No.6, Sri Konathala Jagannadha Rao filed affidavit dated 31-3-2006 stating therein that the petitioner has abused the process of law in the name of public interest litigation. According to the deponent, the writ petition has been filed at the instance of Sri Visweswara Rao, who was one of the partners of respondent No.6 and has been litigating for taking control of the management. In paragraphs 3 and 4 of his affidavit, Sri Konathala Jagannadha Rao averred as under:

> "3. The petitioner herein is a mere name lender to one Sri Sadaram Visweswara Rao, the former Partner of Parameswari Picture Palace, during whose tenure the default to various Governmental agencies and departments has occurred. Sri Visweswara Rao mismanaged the business and misappropriated the funds of the firm. In the process he defaulted to the Government agencies and departments as also to the other partners. This led to the filing of a complaint by the other partners before Joint Collector, Visakhapatnam, dated 17-7-2004. The Joint Collector by his order dated 22-7-2004 ordered not to renew the C Form permit of the Firm M/s.Parameswari Picture Palace. The said Visweswara Rao approached this Honourable Court by way of a Writ Petition W.P.No.25525 of 2004 and partners of the erstwhile Parameswari Picture Palace resolved their the then disputes. Consequently, Sri S.Visweswara Rao retired from the firm with effect from 14-5-2005 and as per the agreement dated 14-5-2005 he undertook to clear the outstanding dues, which include the dues mentioned in the present writ petition. A new firm by name M/s. Sri Parameswari Picture Palace came into being. However, Sri Visweswara Rao failed to discharge his obligations under the agreement dated 14-5-2005. The partners of the firm M/s. Parameswari Picture Palace got issued a legal notice to Sri Visweswara Rao on 3-9-2005 demanding payment of the amounts as per the agreement dated 14-5-2005. It is submitted that the dues complained of in the writ petition relate to the period when Sri Visweswara Rao was in management.
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> 4. Sri Visweswara Rao filed a suit O.S.No.2286 of 2005 against Smt. Malla Sita Ratnam one of the partners of M/s. Sri Parameswari Picture Palace, for the relief of injunction. He also filed an application for an injunction I.A.No.560 of 2005 in O.S.No.2286 of 2005. He failed to get an order of injunction. The defendant therein filed a petition for rejection of the plaint under Order 7 Rule 7 C.P.C. The Court ordered the respondent to get the firm registered on or before 1.12.2005, lest it was observed that the petition filed by Smt. Malla Sita Ratnam stands allowed. Sri Visweswara Rao has

therefore resorted to the present device setting up one of his employees to initiate proceedings by giving them the honourable name of public interest litigation. The following facts unmistakably point towards the involvement of Sri S.Visweswara Rao.

a. The certificate of the letterhead of “Sri Gowri Seva Sangham” is signed by Sri S.Visweswara Rao.

b. The service certificate issued on the letterhead of Sri S.M.V. Engineering Works is signed by Sri Jnesh, S/o.Sri Visweswara Rao.

c. In the additional affidavit, the writ petitioner is shown as the resident of house bearing No.38-40-78, Main Road, Marripalem. It is submitted that the said house belongs to Sri Visweswara Rao. The service certificate and also the certificate of Gowri Seva Sangham describe the writ petitioner as a resident of Kancharapalem.

d. The letterhead on which the certificate is issued by Sri Visweswara Rao leaves the name of the office holders blank which creates considerable doubt as to the genuineness of the letterhead used.

e. It is humbly submitted that the writ petitioner used to work as a gate man in the theatre when Sri Visweswara Rao was a partner. The P.F. records of the petitioner herein shows that he worked as gateman of Parameswarai Picture Palace from 1.10.1984 to 28-6-2002. After the retirement of Sri Visweswara Rao the writ petitioner joined him as the collection boy to collect daily market fees in the village markets at Marripalem which was under Visweswara Rao’s contract.

f. It is humbly submitted that the writ petitioners educational and technical qualifications as mentioned in paragraph 3 of the affidavit and the service certificate issued by Sri Jnesh, S/o. Visweswara Rao are false.”

The petitioner has not filed re-joinder affidavit to controvert the allegations contained in paragraphs 3 and 4 of the affidavit of Sri Konathala Jagannadha Rao, managing partner of respondent No.6. It is therefore, reasonable to proceed on the premise that the petitioner was employed as Gateman in respondent No.6 theatre during the management of Sri Visweswara Rao who unsuccessfully filed civil litigation against the present management in the Court of IV-Additional Junior Civil Judge, Visakhapatnam, and Writ Petition No. 25525 of 2004 before this Court. This is also evinced by the fact that the petitioner has given address of the residential

house which belongs to Sri Vishweswara Rao.

We have heard learned counsel for the parties and perused the record, including the material papers filed on behalf of respondent No.6, which show that the erstwhile managing partner of respondent No.6 had filed civil suit in the Court of Junior Civil Judge, Visakhapatnam for restraining the defendants, including the present management of the theatre, from interfering with its so-called possession of the property, but the plaint filed by him was rejected by IV-Additional Junior Civil Judge, Visakhapatnam and only thereafter, the petitioner, who was, at one time, employed as gatekeeper in the establishment of respondent No.6, has chosen to invoke the jurisdiction of this Court under Article 226 of the Constitution for highlighting the evasion of taxes by respondent No.6. In our considered opinion, the petitioner is a benami litigant on behalf of Sri Visweswara Rao. He has filed this petition at the instance of Sri Visweswara Rao after the latter failed to secure injunction from the civil court against the present management of the theatre. Therefore, the writ petition is liable to be dismissed with costs. Ordered accordingly. The petitioner shall pay costs of Rs.5,000/- (Rupees Five Thousand Only), which shall be deposited with Andhra Pradesh State Legal Services Authority within a period of one month from today.

Notwithstanding dismissal of the writ petition, we deem it proper to take cognizance of the affidavits of Sri V.Bhaskar, Commissioner of Commercial Taxes, Government of Andhra Pradesh and Sri B.R.Meena, who is holding current charge of the post of Commissioner, perusal of which show that a sum of Rs.30.612 Crores is to be recovered from the owners of various theatres and cinema halls in the State of Andhra Pradesh and adequate measures have not been taken by the officers of the department in accordance with the provisions of the 1955 Act. This, in our opinion, calls for a suo motu action by the Court. Registry is directed to register this part of the order as public interest litigation and list the case before the Court on 12-6-2006.

Notice of this suo motu action be issued to the State Government through Secretary, Finance and Commissioner of Commercial Taxes to show cause as to why a direction may not be issued for taking effective steps for recovery of the dues payable by the owners of cinema halls and theatres.

In the meanwhile, the departmental officers are expected to undertake vigorous exercise for recovery of the arrears of taxes due from the defaulting parties.

G.S. SINGHVI, C.J.

13th April, 2006

G. BHAVANI PRASAD, J.

Note:

The Court Officer is directed to give attested copy of this order to the

Learned Government Pleader, Commercial Taxes for being

Forwarded to the concerned authorities of the department.

/B.O/

ARS/GRR/svs